

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs

Case No: 06-20185
Honorable Victoria A. Roberts

ROY WEST, ET AL,

Defendants.

ORDER

At the conclusion of the *Enright* hearing, see *United States v Enright*, 579 F.2d 980 (6th Cir. 1978) on October 18, 2010, the Government indicated that there are telephone calls it intends to introduce as evidence that are admissions of certain defendants, are not co-conspirator statements under FRE 801(d)(2)(E), and are not relevant with respect to the non-speaking Defendants. Nonetheless, the Government took the position that: (1) a limiting instruction with regard to the non-speaking Defendants would not be necessary because the final instructions to the jury will inform them that the jury must give individual consideration to each Defendant; and (2) a limiting instruction, if necessary, could be given at the beginning of the case and at the end.

The Court reads FRE 105 - Limited Admissibility - as requiring a limiting instruction when requested, if evidence that is not admissible as to one party, is received into evidence. That rule of evidence requires the court to restrict evidence to its proper scope and instruct the jury accordingly. While it might become unwieldy at trial to

give a limiting instruction each time such a call is introduced into evidence, the Government should perhaps consider introducing the calls, by saying it are only seeks admission against certain Defendants.

Another alternative is for the parties to agree on the language of a limiting instruction that can be given at the beginning of the case, and periodically throughout the trial.

IT IS ORDERED.

s/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: October 22, 2010

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on October 22, 2010.

s/Linda Vertriest
Deputy Clerk